

CHAPTER 18

COMBATING TERRORISM

REFERENCES

1. 1944 Chicago Convention on International Civil Aviation, (international standards for safeguarding civil aircraft), 14 C.F.R. 107-108.
2. 1963 Tokyo Convention on Offenses and Certain Other Offenses Committed on Board Aircraft, P.L. 91-449; 84 Stat. 921.
3. 1970 Hague Convention for the Unlawful Seizure of Aircraft, see Anti-Hijacking Act of 1974, P.L. 93-366, 49 U.S.C. App. §§ 1472 (i-n).
4. 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Aircraft, (covers acts of sabotage such as bombings aboard aircraft while in flight), see Comprehensive Crime Control Act of 1984, P.L. 98-473, 18 U.S.C. § 32.
5. 1971 Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance, 27 UST 3949; TIAS 8413.
6. 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, (protects senior government officials and diplomats), see P.L. 94-467, 18 U.S.C., §§ 112, 1116, 878, 1201 (a) (4).
7. Convention on the Physical Protection of Nuclear Material, P.L. 97-351 18 U.S.C. § 831.
8. 1979 International Convention Against the Taking of Hostages, P.L. 98-473 18 U.S.C. § 1203.
9. 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation, which supplements the 1971 Montreal Convention on Civil Aviation Safety by extending coverage to airports and aircraft on the ground, Sec. 60021 of the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322.
10. 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Sec. 60019 of the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322. The U.S. subsequently deposited its instruments of ratification for the maritime and airports conventions Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf
11. The 1991 Convention on the Marking of Plastic Explosives for the Purposes of Detection (signed in Montreal in March, 1991) but not yet in force. The U.S. Senate gave its advice and consent in November, 1993. The implementing legislation passed the Senate on June 7, 1995 as part of the Omnibus Counterterrorism Bill, and is contained in the pending House of Representatives version.
12. 10 U.S.C. § 371-382, Military Support to Law Enforcement
13. 10 U.S.C. §§ 331-334, Insurrections
14. 14 U.S.C. § 712, U.S. Coast Guard
15. 18 U.S.C. § 1385, Posse Comitatus Act
16. 32 U.S.C. § 112, Drug Interdiction and Counter Drug Activities
17. 42 U.S.C. §§ 5121-5204c, Stafford Act
18. 50 U.S.C. §§ 401-441d, National Security Act
19. 50 U.S.C. § 413, Intelligence Oversight Act of 1980
20. 50 U.S.C. §§ 2311- 2367, Weapons of Mass Destruction Act of 1996
21. 50 U.S.C. §§ 2251-2303, Civil Defense Act
22. National Defense Authorization Act for Fiscal Year 1991, P.L. 101-510, Section 1004, Additional Support for Counter Drug Activities
23. National Defense Authorization Act for Fiscal Year 1997, D.L. 104-201, Section 1031, Authority to Provide Additional Support for Counter-Drug Activities of Mexico
24. E.O. 12148, Federal Emergency Management
25. E.O. 12333, U.S. Intelligence Activities

26. E.O. 12472, Assignment of National Security and Emergency Telecommunications Functions
27. E.O. 12656, Assignment of Emergency Preparedness Responsibilities
28. E.O. 13010, Critical Infrastructure Protection
29. NSD 66, Civil Defense
30. PDD 39, U.S. Policy on Counterterrorism (Unclassified Extract)
31. PDD 62, Combating Terrorism
32. PDD 63, Critical Infrastructure Protection
33. DoDD 2000.12, *DoD Combating Terrorism Program*
34. DoDD 2000.14, Draft, *DoD Combating Terrorism Program Procedures*
35. DoDD O-2000.12H, *Protection of DoD Personnel and Activities Against Acts of Terrorism and Political Turbulence*
36. DoDI, O-2000.16, *DoD Combating Terrorism Program Standards*
37. DoDD 3020.26, *Continuity of Operations, Policies and Planning*
38. DoDD 3020.36, *Assignment of National Security*
39. DoDD 3025.1, *Military Support to Civil Authorities*
40. DoDD 3025.12, *Military Support to Civil Disturbances*
41. DoDM 3025.1M, *Manual for Civil Emergencies*
42. DoDD 3150.5, *DoD Response to Improvised Nuclear Device*
43. DoDD 3150.8, *DoD Response to Radiological Incidents*
44. DoDD 4000.19, *Interservice and Intergovernmental Support*
45. DoDM 5100.52M, *Nuclear Weapon Accident Response Procedures*
46. DoDD 5160.54, *DoD Key Asset Protection Plan*
47. DoDM C-5210.41-M, *Nuclear Weapons Safety Manual*
48. DoDD 5210.84, *Security of DoD Personnel at U.S. Missions Abroad*
49. DoDD 5240.1, *DoD Intelligence Activities*
50. DoDD 5240.1-R, *Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons*
51. DoDD 5240.6, *Counterintelligence Awareness and Briefing Program*
52. DoDD 5525.5, *DoD Cooperation with Law Enforcement Officials*
53. CJCSI 3710.01, *Operational Support to Drug Law Enforcement Agencies*
54. CJCSI 5261.01A, *Combating Terrorism Readiness Initiatives Fund*
55. DoD Civil Disturbance Plan, GARDEN PLOT
56. Joint Pub 2-0, *Doctrine for Intelligence Support for Joint Operations*
57. Joint Pub 3-05, *Doctrine for Joint Operations*
58. Joint Pub 3-05.3, *Joint Special Operations Operational Procedures*
59. Joint Pub 3-07.2, *Joint Tactics, Techniques, and Procedures for Antiterrorism*
60. Joint Pub 3-07.7, *Joint Tactics, Techniques, and Procedures for Domestic Support Operations*
61. Joint Pub 3-10.1, *Joint Tactics, Techniques, and Procedures for Base Defense*
62. Joint Pub 3-54, *Joint Doctrine for Operations Security*
63. AR 381-10, *U.S. Army Intelligence Activities*
64. NGR 500-1/ANGI 10-8101, *Military Support to Civil Authorities*
65. NGB 500-2/ANGI 10-801, *National Guard Counterdrug Support to Law Enforcement*
66. AR 500-51, *Support to Civilian Law Enforcement*
67. AR 700-131, *Loan and Lease of Army Material*
68. SECNAVINST 5820.7B, *Cooperation with Civilian Law Enforcement Officials*
69. OPNAVINST 3440.1C, *Navy Civil Emergency Management*
70. AFI 10-801, *Air Force Assistance to Civilian Law Enforcement Officials*
71. AFI 10-802, *Military Support to Civil Authorities*
72. AFI 31-202, *Working Dog Program*
73. FM 100-19, *Domestic Support Operations*
74. DoD Report to Congress, *Domestic Preparedness Program in the Defense Against Weapons of Mass Destruction*, May 1, 1997.
75. DoD Plan for Integrating National Guard and Reserve Component Support for Response to Attacks Using Weapons of Mass Destruction, January 1, 1998.

INTRODUCTION

As a result of the United States' superior military strength, foreign nations, non-state foreign organizations, and domestic groups are more likely to resort to terror tactics rather than conventional military strikes. This means that more than ever, civilian as well as military objects at home and abroad are vulnerable to attack. Further complicating the problem is the ever-increasing availability of technology and weapons of mass destruction (WMD) traditionally only within the domain of nation states. Historically, terrorist attacks were politically motivated and did not typically involve mass casualties. However, the face of terrorism is changing. The availability of WMD, coupled with the increasing emergence of religiously motivated terrorist groups and cults creates a volatile mix. Terrorist groups are now actively seeking the maximum carnage possible. Recent publicized examples of terrorist attacks include the attack on the USS Cole, bombings of U.S. Embassies in Africa, the Riyadh and Al Khobar bombings in Saudi Arabia, the downing of Pan Am Flight 103 over Lockerbie Scotland, the Sarin Gas attack in the Tokyo subway, and the domestic bombings of the World Trade Center in New York and the Federal Building in Oklahoma.

As the world moves from the relative stability of the bipolar Cold War era to the era of continuing disintegration and reintegration of states, the use of terror tactics, according to many, will increase. Largely as a result of shifting and weakened political power, world wide media coverage, and weapons availability, loosely organized groups, often motivated by zealous religious or strong anti-government beliefs, see terrorism as a method to achieve their goals. Furthermore, developing nation states that lack the resources to use aggressive traditional military tactics and techniques will continue to sponsor terrorist groups and terrorist attacks. Terrorism provides a means to states without real military power to attempt to influence world politics with force. State sponsored terrorism is appealing to developing nations because of its lower risk. It is often difficult to link a state to a terrorist attack and sponsorship does not typically involve costs equal to conventional attacks. It is often the terror such an attack produces that is the primary goal of a terrorist attack because it is often far more effective than the actual direct harm caused by such an attack.

The Department of Defense (DoD) is not the lead agency for combating terrorism. However, DoD does play a significant supporting role in several areas. DoD is responsible for providing technical assistance or forces when requested by the National Command Authority (NCA). Moreover, DoD is also responsible for protecting its own personnel, bases, ships, deployed forces, equipment and installations. Every commander at every level has the inherent responsibility of planning for and defending against terrorist attacks. Similarly, every servicemember, family member, and DoD Civilian, contractor and host nation laborer should be educated and alerted to possible terrorist attacks. The Command Judge Advocate should participate in all foreign and domestic antiterrorism plans and in the implementation of those plans. Command Judge Advocates assigned to units involved in counterterrorism should have a thorough understanding of the unit's plans and missions.

"Terrorism" is defined in DoD Dir. 2000.12 as the calculated use of violence or threat of violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological." The term combating terrorism involves both Counterterrorism and Antiterrorism.

Counterterrorism (CT) generally refers to offensive military operations designed to prevent, deter, and respond to terrorism. It is a highly specialized, resource intensive military activity. Certain national special operations forces units are prepared to execute these missions on order by the NCA. Combatant commanders maintain designated CT contingency forces when national assets are not available. These programs are sensitive, normally compartmented, and addressed in relevant National Security Decision Directives, National Security Directives, contingency plans and other classified documents. Therefore, this subject is beyond the scope of this publication.

Antiterrorism (AT) consists of defensive measures to reduce the vulnerability of individuals and property to terrorist attacks. Overseas (OCONUS), AT should be an integrated and comprehensive plan within each combatant command. The AT plan is normally thought of in two primary phases; proactive and reactive. The proactive phase includes the planning, resourcing, preventive measures, preparation, awareness, education, and training prior to an incident. The reactive phase includes the crisis management actions in response to an attack. In the continental United States (CONUS), DoD role is generally that of providing expert technical support in the area of consequence management.

JUDGE ADVOCATE INVOLVEMENT

As a member of the Crisis Management Team, the judge advocate must provide essentially the same kind of legal advice to the commander of a force deployed overseas as he would provide in the event of a terrorist incident occurring at a CONUS installation. The unit must be prepared to defend itself, and legal questions, such as limitations, if any, on the use of force, and on the use of deadly force, as well as the question of who may exercise jurisdiction over a particular incident, are issues that must be addressed prior to deployment.

The commander of a deployed unit, in addition to providing for force security and terrorism counteraction, must ensure that the soldiers are operating under clear, concise rules of engagement, regardless of the deployment location. Soldiers must be aware of their right to defend themselves, even while participating in a peacetime exercise. They must also be aware, however, of any restraints on the use of force. Note that the CJCS SROE include “any force or terrorist unit (civilian, paramilitary, or military)” within the definition of “Hostile Force.”

Judge advocates advising units involved in counterterrorism operations should be particularly cognizant of issues concerning: use of force/ROE, weapons selection and employment, collateral damage, defense of third parties, targeting (determination of proper targets), and terminology (response, reprisal, self-defense, and anticipatory self-defense). PDD 39 should be reviewed.

LEAD AGENCIES

DoJ is normally the lead agency for domestic terrorism and the FBI is the lead agency within DoJ for operational responses to terrorist incidents. The DoJ, specifically the FBI, is responsible for all search and recovery operations involving nuclear weapons conducted in the United States, District of Columbia, Commonwealth of Puerto Rico, and U.S. possessions and territories, including those conducted on military installations. DoS is the lead agency for acts not under FBI responsibility.

FAA is the lead agency for terrorist incidents that occur aboard an aircraft in flight. It is also responsible for investigating and preventing aircraft piracy and for informing commercial air carriers and their passengers regarding any terrorist threat information.

The U.S. Coast Guard (USCG) is responsible, within the limits of U.S. territorial seas, for reducing the risk of a maritime terrorist incident by diminishing the vulnerability of ships and facilities through implementation of security measures and procedures. USG is the lead agent responding to terrorist actions that occur in maritime areas subject to U.S. jurisdiction. The USCG and FBI have an interagency agreement (Commandant Instruction 16202.3A) to cooperate with each other when coordinating counterterrorism activities.

DoD is the lead agency, at least through 1999, for carrying out a program to provide civilian personnel of Federal, State or local agencies with training and expert advice regarding emergency responses to use or threatened use of a weapon of mass destruction or related materials.

All other Federal agencies possessing resources for responding to terrorism are linked together through agency command centers and crisis management groups to ensure effective coordination of the U.S. response. Formal interagency coordination of national policy and operational issues to combat terrorism occurs through the NSC and in the intelligence community. The Coordinating Sub-Group of the Deputies Committee, made up of representatives from State, Justice, DoD, CJCS, CIA and FBI, deals with and tries to reach consensus on terrorism policy and operational matters and makes recommendations to the Deputies Committee or through the NSA to the President.

AUTHORITY

Criminal Actions. Most terrorist acts are federal crimes whether committed during peacetime or in military operations. Terrorists, by definition, do not meet the four requirements necessary for combatant status: (wear uniforms or other distinctive insignia, carry arms openly, be under command of a person responsible for group actions, and conduct their operations in accordance with the laws of war). Only combatants can legitimately attack proper military targets. For this reason, captured terrorists are not afforded the protection from criminal prosecution attendant to prisoner of war status.

However, common article 3 of the 1949 Geneva Conventions, which requires that noncombatants be treated in a humane manner, also applies to captured terrorists.

Jurisdiction. In peacetime military operations, most terrorist acts are federal crimes. This is also true in police actions to maintain a legitimate government. However, in an internationally recognized war or hostilities short of war (regional or global), terrorists can be tried under local criminal law or under military jurisdiction by either a court-martial or military tribunal Commander's Authority. A commander's authority to enforce security measures to protect persons and property is paramount during any level of conflict. Commanders must coordinate with their legal advisers to determine the extent of their authority to combat terrorism.

CONSTITUTIONAL AND STATUTORY GUIDANCE

The fundamental restriction on the use of the military in law enforcement are contained in the Posse Comitatus Act (PCA), which is discussed at length in Chapter 19, Domestic Operations. However, several of the exceptions to the PCA are relevant to DoD's contribution to the fight against terrorism. A discussion of the exceptions follows:

Constitutional Exceptions: The President, based on his inherent authority as the Executive, has the authority to use the military in cases of emergency and to protect federal functions and property. Military commanders, by extension of this authority, may respond in such cases as well (Immediate Response Authority). In the case of civil disturbances, which may result from a terrorist act, military commanders may rely on this authority, which is contained in DoD Directive 3025.12, discussed in the previous section of this chapter.

Generally, to cope with domestic emergencies and to protect public safety an Emergency Rule has evolved: When the calamity or extreme emergency renders it dangerous to wait for instructions from the proper military department, a commander may take whatever action the circumstances reasonably justify. However, the commander must comply with the following:

1. Report the military response to higher headquarters, e.g. in the Army, the Director of Military Support (DOMS) at HQDA, DCSOPS should be contacted.
2. Document all facts and surrounding circumstances to meet any subsequent challenge of impropriety.
3. Retain military response under the military chain of command.
4. Limit military involvement to the minimum demanded by necessity
5. Emergency situations include, but are not limited to, the following:
 - (a) Providing civilian or mixed civilian and military fire-fighting assistance where base fire departments have mutual aid agreements with nearby civilian communities.
 - (b) Providing emergency explosion ordnance disposal (EOD) service
 - (c) Using military working dog (MWD) teams in an emergency to aid in locating lost persons (humanitarian acts) or explosive devices (domestic emergencies).

Statutory Exceptions: 10 U.S.C. §§ 331-334 is the primary statutory exception pertinent to terrorism scenarios. A terrorist incident may well qualify as a civil disturbance. Triggering these statutes permits the active component to take on law enforcement function, subject to the policy considerations discussed in the preceding section. Federalization of the National Guard, in such a case, will not affect the Guard's functioning as they would, obviously, not be excepted from the PCA as well. For more information on these statutes, see the preceding section. Statutory exceptions, in addition to some lesser known statutes that contain exceptions to the PCA:

1. To assist the Department of Justice in cases of offenses against the President, Vice President, members of Congress, the Cabinet, a Supreme Court Justice, or an "internationally protected person." 18 U.S.C. §§ 351, 1116, 1751.

2. To assist the Department of Justice in enforcing 18 U.S.C. § 831, dealing with prohibited transactions involving nuclear materials. This statute specifically authorizes the use of DoD assets to conduct arrests and searches and seizures with respect to violations of the statute in cases of “emergency,” as defined by the statute.

3. 18 U.S.C. § 382 allows DoD to assist the Department of Justice in enforcing 18 U.S.C. § 175 & 2332, during an emergency situation involving chemical or biological weapons of mass destruction. DoD support in WMD situations also appears in 50 U.S.C. §§ 2311- 2367, Weapons of Mass Destruction Act of 1996. These statutes specifically authorize the use of DoD assets and in **very limited** situations provide authorization for DoD to arrest, search and seize.

Vicarious Liability. Commanders at all echelons should be aware of the legal principle of vicarious liability in planning and implementing antiterrorist measures. This principle imposes indirect Legal responsibility upon commanders for the acts of subordinates or agents. For example, willful failure on the part of the commander or a subordinate to maintain a trained and ready reaction force as required by regulation, could be construed as an act taking the commander out of the protected position found in being an employee of the Federal Government; thus making the commander subject to a civil suit by any hostages injured. Civil or criminal personal liability may result from unlawful acts, negligence, or failure to comply with statutory guidance by subordinates or agents. With the increasing number of civilian contract personnel on military installations and the sophistication of terrorist organizations, commanders should pay particular attention to meeting regulatory requirements and operating within the scope of their authority. The legal principle of vicarious liability, long established in the civilian community, has only recently applied to the military community. In this right, the command legal adviser has become increasingly important to the commander in planning, training and operational phases of the antiterrorist program.

JURISDICTION AND AUTHORITY FOR HANDLING TERRORIST INCIDENTS

Jurisdiction Status of Federal Property. In determining whether a Federal or state law is violated, it is necessary to look not only to the substance of the offense but to where the offense occurs. In many cases, the location of the offense will determine whether the state or Federal Government will have jurisdiction to investigate and prosecute violations. There are four categories of Federal territorial jurisdiction: exclusive, concurrent, partial, and proprietary.

1. Exclusive jurisdiction means that the Federal Government has received, by whatever method, all of the authority of the state, with no reservations made to the state except the right to serve criminal and civil process. In territory that is under the exclusive jurisdiction of the United States, a state has no authority to investigate or prosecute violations of state law. The Assimilative Crimes Act, 18 U.S.C. § 13, however, allows the Federal Government to investigate and prosecute violations of state law that occur within the special maritime and territorial jurisdiction of the United States.

2. Concurrent jurisdiction means that the United States and the state each have the right to exercise the same authority over the land, including the right to prosecute for crimes. In territory that is under the concurrent jurisdiction of the United States and a state, both sovereigns have the authority to investigate or prosecute violations of Federal and state law respectively. In addition, the Federal Government may prosecute violations of state law under the Assimilative Crimes Act.

3. Partial jurisdiction refers to territory where the U.S. exercises some authority and the state exercises some authority beyond the right to serve criminal and civil process, usually the right to tax private parties. In territory that is under the partial jurisdiction of the United States, a state has no authority to investigate or prosecute violations of state law, unless that authority is expressly reserved. The Federal Government may, however, prosecute violations of state law under the Assimilative Crimes Act.

4. Proprietary jurisdiction means that the United States has acquired an interest in, or title to, property but has no legislative jurisdiction over it. In territory that is under the proprietary jurisdiction of the United States, the United States has the authority to investigate and prosecute non-territory-based Federal offenses committed on such property, such as assault on a Federal officer. This authority does not extend to investigations and prosecution of violations of state laws under the Assimilative Crimes Act and Federal Crimes Act of 1970. The state has the authority to investigate and prosecute violations of state law that occur on such territory.

Federal Authority. Several Federal criminal statutes apply to terrorist activities committed in the U.S. or against U.S. nationals or interests abroad. Some deal with conduct that is peculiar to terrorism, for example, 18 U.S.C. § 2332 prohibiting murder or assault of U.S. nationals overseas, when the AG certifies that the crime was intended to coerce, intimidate, or retaliate against a civilian population. Other federal statutes prescribe conduct that is a crime for anyone but in which a terrorist may engage to accomplish his purposes, for example, 18 U.S.C. § 32 (destruction of aircraft or aircraft facilities, 18 U.S.C. § 1203 (hostage taking), and 49 U.S.C. § 46502 (aircraft piracy). The Assimilative Crimes Act, finally, will allow the Federal Government to investigate and prosecute violations of state law regarding terrorist acts or threats that occur within the exclusive concurrent, or partial jurisdiction of the United States, thereby giving the Federal Government investigative and prosecutorial jurisdiction over a wide range of criminal acts. Once a violation of Federal law occurs, the investigative and law enforcement resources of the FBI and other Federal enforcement agencies become available, and prosecution for the offense may proceed through the Office of the United States Attorney.

Federal and State Concurrent Authority. In some cases, terrorist acts may be violations of state law as well as Federal Law. In the situation, both state and Federal enforcement authorities have power under their respective criminal codes to investigate the offense and to institute criminal proceedings. If a terrorist act is a violation of both Federal and state law, then the Federal Government can either act or defer to the state authorities depending on the nature of the incident and the capabilities of local authorities. Even where the Federal Government defers to state authorities, it can provide law enforcement assistance and support to local authorities on request. The choice between Federal or state action is made by the prosecuting authority. However, successive prosecutions are possible even where Federal and state law proscribe essentially the same offense, without contravening the Fifth Amendment prohibition against double jeopardy. (Recall Federal and state prosecutions re: Oklahoma City Bombing) Two relevant factors regarding law enforcement responsibility for a given incident are:

1. The capability and willingness of state or Federal authorities to act
2. The importance of the state or Federal interest sought to be protected under the criminal statute.

FEDERAL AGENCIES AND THE MILITARY

Overview. The primary Federal organizations dealing with terrorism management are the National Security Council (NSC), the Department of State (DoS), and the Department of Justice (DoJ).

The National Security Council. The NSC formulates U.S. policy for the President on terrorist threats that endanger U.S. interests.

NSC's Coordinating Sub-Group of the Deputies Committee. This Committee is comprised of representatives from State, Justice, DoD, CJCS, CIA and FBI. The Sub-Group deals with and tries to reach consensus on terrorism policy and operational matters and makes recommendations to the Deputies Committee or through the National Security Advisor to the President.

Department of Justice. DoJ is normally responsible for overseeing the Federal response to acts of terrorism within the U.S.. The U.S. Attorney General, through an appointed Deputy Attorney General, makes major policy decisions and legal judgments related to each terrorist incident as it occurs. In domestic terrorism incidents the AG will have authorization to direct a FBI-led DEST (Domestic Emergency Support Team) an ad hoc collection of interagency experts.

Federal Bureau of Investigation. The FBI has been designated the primary operational agency for the management of terrorist incidents occurring within the U.S.. When a terrorist incident occurs, the lead official is generally the Special Agent in Charge (SAC) of the field office nearest the incident and is under supervision of the Director of the FBI. The FBI maintains liaison at each governor's office. Because of the presence of concurrent jurisdiction in many cases, the FBI cooperates with state and local law enforcement authorities on a continuing basis. In accordance with the Atomic Energy Act of 1954, the FBI is the agency responsible for investigating a threat involving the misuse of a nuclear weapon, special nuclear material, or dangerous radioactive material. For an emergency involving terrorism or terrorist acts involving chemical or biological weapons of mass destruction the FBI also has the lead. In these efforts, the FBI cooperates with the Departments of Energy, DoD, the Nuclear Regulatory Commission, and the Environmental

Protection Agency as well as several states that have established nuclear, chemical & biological and/or weapons of mass destruction threat emergency response plans.

Department of Defense. DoD Directive 2000.12 now proscribes that the Assistant Secretary of Defense (Special Operations and Low Intensity Conflict - ASD-SO/LIC) has the lead role within the Department of Defense in countering domestic terrorist incidents where U.S. forces may be used. The Nunn-Lugar Bill calls for the military to maintain at least one domestic terrorism rapid response team composed of members of the Armed Forces and employees of DoD with the appropriate expertise. DoD has technical organizations and tactical units such as the Chemical, Biological Defense Command, the U.S. Army EOD Group, the Defense Technical Response Group and the U.S. Army TEUs, that can assist the FFBI on site in dealing with chemical and biological incidents, such as identification of contaminants, sample collection and analysis, limited decontamination, medical diagnosis and treatment of casualties and render safe procedure for WMD devices. DOMS will serve as the executive agent for all domestic consequence support. However, the Attorney General, through the FBI, will remain responsible for coordinating :

1. The activities of all Federal agencies assisting in the resolution of the incident and in the administration of justice in the affected areas.
2. These activities with those state and local agencies similarly engaged.

For the military planner in the United States, its territories and possessions, this relationship between DoJ and the DoD requires the development of local memorandums of agreement, or understanding, between the installation, base, unit or port, and the appropriate local FBI office. This precludes confusion in the event of an incident. These local agreements, because of military turnover and reorganization, should be reviewed and tested annually.

Military Authority. Upon notification of Presidential approval to use military force, the Attorney General will advise the Director of the FBI who will notify the SAC at the terrorist incident scene. Concurrently the SECDEF will notify the on-scene military commander. Nothing precludes the presence of the military liaison to respond and keep the military chain of command informed. The military commander and the SAC will coordinate the transfer of operational control to the military commander. Responsibility for the tactical phase of the operation is transferred to military authority when the SAC relinquished command and control of the operation and it is accepted by the on-site military commander. However, the SAC may revoke the military force commitment at any time before the assault phase if the SAC determines that military intervention is no longer required and accomplished without seriously endangering the safety of military personnel or others involved in the operation. When the military commander determines that the operation is complete and military personnel are no longer endangered, command and control will be promptly returned to the SAC.

MILITARY INSTALLATION COMMANDER'S RESPONSIBILITIES

PDD-39 directs federal agencies to ensure that the people and facilities under their jurisdiction are protected against terrorism. This applies to DoD facilities both abroad and in the U.S. In response to a Downing Assessment Task Force recommendation concerning the Khobar Towers bombing, DoD and the State Dept. are reviewing their responsibilities to protect U.S. military and personnel assigned overseas.

Domestic Incidents. Although the FBI has primary law enforcement responsibility for terrorist incidents in the United States (including its possessions and territories), installation commanders are responsible for maintaining law and order on military installations. Contingency plans should address the use of security force to isolate, contain, and neutralize a terrorist incident within the capability of installation resources. In the United States, installation commanders will provide the initial and immediate response to any incident occurring on military installations to isolate and contain the incident. The FBI will take the following steps:

1. The senior FBI official will establish liaison with the command center at the installation. If the FBI assumes jurisdiction, the FBI official will coordinate the use of FBI assets to assist in resolving the situation; e.g., hostage rescue team, public affairs assets.
2. If the FBI assumes jurisdiction, the Attorney General will assume primary responsibility for coordinating the Federal law enforcement response.

3. If the FBI declines jurisdiction, the senior military commander will take action to resolve the incident.
4. Even if the FBI assumes jurisdiction, the military commander will take immediate actions as dictated by the situation to prevent loss of life or to mitigate property damage before the FBI response force arrives.
5. In all case, command of military elements remains within military channels.
6. Response plans with the FBI and Service agencies should be exercised annually at the installation and base level to ensure the plans remain appropriate.

Foreign Incidents. For foreign incidents, the installation commander's responsibilities are the same as for domestic incidents—with the added requirement to notify the host nation and DoS. Notification to DoS is made at the combatant commander level. In all AORs, existing contingency plans provide guidance to the installation commander regarding notification procedures. DoS has the primary responsibility for dealing with terrorism involving Americans abroad. The installation's response is also subject to agreements established with the host nation. Such agreements, notwithstanding, the Standing Rules of Engagement (CJCS Instruction 3121.01, para 1.d.), make it clear that the commander retains the inherent right and obligation of self-defense even in such situations.

The response to off-installation foreign incident is the sole responsibility of the host nation. U.S. military assistance, if any, depends on the applicable status-of-forces agreement (SOFA) or memorandum of understanding (MOU) and coordination through the U.S. embassy in that country. Military forces will not be provided to host-nation authorities without a directive from the Department of Defense that has been coordinated with DoS. The degree of DoS interest and the involvement of U.S. military forces depend on the incident site, nature of the incident, extent of foreign government involvement, and the overall threat to U.S. security.

HOMELAND DEFENSE INITIATIVE

Due to the increased availability of WMD and the increased threat of terrorist acts at home and abroad, the U.S. Government and its agencies are taking a closer look at how the United States can best protect itself against both traditional and terrorist attacks. Agencies such as DoJ, DoD, Department of Energy (DOE), the Intelligence Community, Federal Emergency Management Agency (FEMA), Department of the Treasury, Department of Transportation (DOT), Department of Health and Human Services (DHHS), Environmental Protection Agency (EPA), and the Federal Aviation Administration, are working together on a project referred to as the Homeland Defense Initiative (HDI). HDI is an integrated and coordinated plan to defend against and respond to attacks against the United States homeland. For the purposes of HDI, attacks include terrorist acts, information warfare, ballistic missile attacks, transnational threats, attacks on critical infrastructure and WMD incidents. HDI participants are working to strengthen the federal, state and local governments' ability to defend the United States territory and citizens from attack, to coordinate crisis and response management of WMD incidents, and to protect critical assets including critical infrastructure and cyber-based systems. HDI may be extended to counterdrug, disaster relief, migrant operations and civil disobedience operations.

With the exception of defending against direct attack, providing direct attack deterrence, and protecting critical national defense assets, DoD's role in HDI primarily involves providing military forces in support of civilian federal, state, and local agencies. However, a simultaneous domestic terrorist attack on critical infrastructure during overseas operations could have a significantly negative affect on the ability of the United States to commit the strategic reserve. Attacks on domestic roadways, airports, communications systems, electrical power plants, and computer networks, would, in many cases, delay or prevent the deployment of United States combat power. Although domestic terrorism is generally viewed as criminal activity, the ramifications of such an attack directly impact force projection capabilities as well as raising force protection issues. This is especially true where the terrorism is state sponsored or where WMD are involved.

The nature of a WMD attack places a burden on the local response community that it may not be able to bear. Conversely, DoD may need the assistance of civilian assets in the event of an attack on or near a military installation. DoD is postured to support local, state and federal government agencies in planning for and responding to domestic emergencies. Active Duty, National Guard, and Reserve forces possess expertise, trained manpower, and equipment that can support response to chemical, biological, radiological attacks at DoD installations and in civilian communities.

Expert and capable response organizations like Explosive Ordnance Disposal teams, the Army's Technical Escort Unit, and the Marine Corps Chemical Biological Incident Response Force have been involved in the development of response plans and procedures.

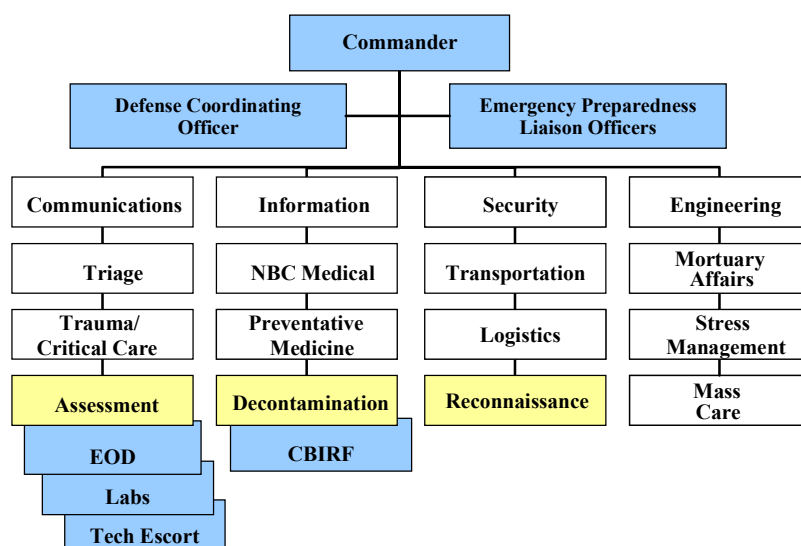
For the purpose of HDI, a definition of WMD may include "any weapon or device that has the capability, to cause death or serious bodily injury to a significant number of people through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors; a disease organism; or radiation or radioactivity.¹ Actions with respect to a WMD incident can be divided into two tracks. Crisis Management is the actions taken to prevent WMD attacks, activities taken against the perpetrators and efforts to combat the civil unrest that may follow. Crisis management is within the purview of local, state and federal law enforcement. Within the federal government, the FBI is the lead agency. DoD support in this area is generally provided through the Military Support to Civil Authority and Military Assistance for Civil Disturbances directives described above and in Chapter 19, Domestic Operations. When directed by the NCA, certain Special Operations Forces provide assistance to civilian law enforcement involved in crisis management.

Consequence Management on the other hand is those activities taken in response to reduce or limit the affects of a WMD incident on the population and environment. FEMA is generally the lead agency in Consequence Management operations. DoD expertise and technology is particularly valuable in the area of consequence management.

When directed by the NCA, Joint Forces Command, through FORSCOM, establishes and deploys a Response Task Force (RTF) to the designated Joint Operations Area (JOA) to support the Lead Federal Agency (LFA) in crisis and consequence management during a WMD incident. There are two RTFs under FORSCOM's control; RTF West, composed of Fifth U.S. Army assets, and RTF East, First U.S. Army forces.

Below is a chart depicting the makeup of an RTF broken down by function and element. The RTF is task organized depending on the crisis.

Response Task Force Elements



¹ 10 U.S.C. § 2302, Weapons of Mass Destruction.

In addition to the RTFs, National Guard Rapid Assessment and Initial Detection (RAID) teams can be sent to a WMD incident. These RAID teams are Title 32 full-time National Guard soldiers under the command of their respective governors. The governor of a state in which there is a RAID team determines when to commit RAID teams in their state. RAID teams in one state may be dispatched by the governor to another state requesting aid. Eventually, RAID teams will be responsible for incidents within a 150 radius of their location. The goal is to have ten RAID teams mission ready by January 2000, with another five by the year's end and eventually at least one RAID team in every state. While the RAID teams are under state control, Joint Forces Command has oversight responsibility through the 1st and 5th Armies. If a RAID team is federalized, the team is OPCON to the RTF.

RAID teams deploy to an area, assess a suspected nuclear, biological, chemical, or radiological event in support of local leaders, advise civilian responders and facilitate requests for assistance to expedite the arrival of additional state and federal assets. The primary RAID team may consist of approximately 15 full-time National Guard soldiers. Many states are also establishing secondary, or part-time RAID teams units capable of performing RAID type missions. Unless federalized, ARNG forces operating under Title 32 of the U.S. Code and not within the purview of the Posse Comitatus act.